

93-61

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June 12, 1996

Federal Communications Commission  
Wireless Telecommunications Bureau  
Commercial Wireless Division  
2025 M Street, N.W., Room 7002  
Washington, D.C. 20554

Re: Comments on Waiver Request  
WPCY395 et al., WNWC592 et al., WPEF613 et al., WPFM450 et al.

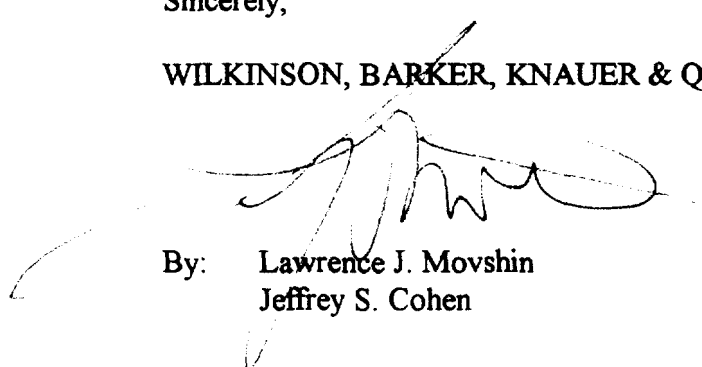
Dear Ladies/Gentlemen:

We hand you herewith on behalf of CellNet Data Systems an original and four copies of its Comments in the above-referenced proceeding.

Should you have any questions regarding this submission, please contact the undersigned.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN

By:   
Lawrence J. Movshin  
Jeffrey S. Cohen

cc: Michele Farquhar  
David Furth  
Jane Halprin  
Suzanne Toller  
Jackie Chorney  
Rosalind Allen  
Sally Janin  
David Siddall  
Rudolfo Baca

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

<b>PINPOINT COMMUNICATION</b>	)	
<b>NETWORKS, INC.</b>	)	WPCY395, et al.
	)	
<b>MOBILEVISION, L.P.</b>	)	WNWC592, et al.
	)	
<b>UNIPLEX CORPORATION</b>	)	WPEF613. et al.
	)	
<b>ROGER D. LINQUIST</b>	)	WPFM450, et al.
	)	
Licenses for New Facilities in	)	
the Multilateration Location	)	
Monitoring Service (LMS)	)	

To: Chief, Wireless Telecommunications Bureau

**COMMENTS ON WAIVER REQUEST**

CELLNET DATA SYSTEMS, INC. ("CellNet"), by its attorneys, hereby comments on the Joint Motion For Rule Waiver filed by the above-referenced parties on May 23, 1996.<sup>1</sup> While a sixty day extension, by itself, does not

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<sup>1</sup> CellNet has spent more than seven years developing a low-cost, highly efficient automated metering and wireless data monitoring system using spread spectrum technology, primarily targeted to the metering needs of the electric and gas utilities. CellNet participated in all facets of the Commission's PR Docket No. 93-61 proceeding developing the LMS rules, both in its own right and as an active member of the Part 15 Coalition and its technical subcommittee, generally maintaining, among other concerns, that the LMS proposals were a solution in search of a problem, fueled by many entities with licenses but no clear use for them who were ultimately intent on developing more ubiquitous PCS-like services without competing for the PCS spectrum. Given CellNet's earlier concerns, the opportunity to comment on the issues arising from the Waiver Request (continued...)

appear to be a significant matter, the Waiver raises serious issues as to whether the public interest is served by the anticipated merger that will be facilitated by such extension, and thus whether a waiver of the rule is, in fact, justified.

First, the Petitioners' argument that they do not have adequate time to meet the "newly imposed" construction deadlines begs for further explanation. Each of these parties has been involved in the AVM industry and its technical development for years;<sup>2</sup> indeed, they are trying to take advantage of grandfathering benefits available only to existing licensees.<sup>3</sup> Although all of their applications were filed when the AVM rules were "interim" in nature, these applicants now claim that they made a conscious choice to delay any construction or serious fundraising activities not merely until the rules became "permanent," as suggested in the NPRM, but further until they had absolute certainty of the grant of these modifications.

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<sup>1</sup> (...continued)  
is welcomed.

<sup>2</sup> Each party filed comments on the NPRM in PR Docket No. 93-61 in June, 1993; at the time, all but Pinpoint had licenses, and Pinpoint had applications pending.

<sup>3</sup> Their constant reference to the "recent" grant of "licenses" is somewhat misleading; the April, 1996 grants were license modifications, allowing changes to licenses previously granted.

The decision to delay any effort to move this industry forward must be viewed as a business judgement that the Commission should not be required to review or, more importantly, bound to relieve. As the agency recently noted in denying similar prayers for relief to a PCS applicant who delayed fundraising needed to meet its downpayment obligations, "the Commission . . . cannot be responsible for the private business arrangements that an applicant has made to finance [its FCC activities]."<sup>4</sup>

The petitioners should not now be heard to claim that the absence of a waiver (and the impetus it will provide for the merger of these entities' interests) will effectively deny the proposed systems the economic viability needed to justify the merger. These applicants applied for their licenses years ago, when the rules still had an "interim" status; presumably, each petitioner applied in good faith for independent systems in the expectation that they could be independently viable. That their plans have now been shown otherwise draws into question, to some degree, the basis on which the original applications were filed. It certainly raises questions about the appropriateness of each of these four parties holding -- or at least retaining -- without serious efforts to construct for years -- all of

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<sup>4</sup> BDPCS, Inc., Order, DA 96-811 (W.T.B. May 20, 1996).

these licenses without any apparently viable economic basis for them.

Nor is it clear that the public interest will be served by the aggregation of four otherwise vigorous competitors into a single system. The very basis for the adoption of permanent rules for LMS services was the stimulation of competition among a variety of different approaches to the provision of location and monitoring type systems.<sup>5</sup> By merging their interests, four of the principal proponents of the rules will become a single entity, virtually destroying the competitive impetus – and the natural impact on innovation and pricing that such competition engenders – in a number of large metropolitan areas in which two or three of the petitioners currently hold licenses. And while the petitioners would urge that their aggregation will create a major player in the future competitive bidding process for the LMS licenses, it can be more readily argued that their merger will take out three highly probable bidders, thereby reducing competition for the remaining licenses and thus the values otherwise obtainable for this spectrum in such auctions.

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<sup>5</sup> In fact, Pinpoint recognized the importance of this matter in requesting reconsideration of the "grandfathering" rules. See Pinpoint's Petition, filed April 24, 1995, at page 2.

At the end of the day, the waiver appears but a last gasp effort by parties who applied for licenses without a clear plan for their use in an economically viable system, to combine into a single entity whose aggregated holdings may well overwhelm the spectrum resources of all but the largest remaining players in many markets. Waivers should not be lightly granted, and truly unique circumstances must be presented to warrant any extraordinary relief. While a simple sixty day extension of the construction deadline would, on its face, appear harmless, for the reasons outlined herein, the issues surrounding the justification for such a waiver warrant more serious and intense consideration than the Waiver would suggest.

Respectfully submitted,

**CELLNET DATA SYSTEMS, INC.**



By: **LAWRENCE J. MOVSHIN**  
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Its Attorneys

June 12, 1996

CERTIFICATE OF SERVICE

I, Shelia L. Smith, a secretary at the firm of Wilkinson, Barker, Knauer & Quinn, do certify that a copy of the foregoing Comments of CELLNET DATA SYSTEMS, INC. was mailed this 12th day of June, 1996, via U.S. mail, postage prepaid, first class, to the offices of:

Raymond J. Kimball  
Ross & Hardies  
888 16th Street, N.W.  
Washington, D.C. 20006-4103

Shelia L. Smith  
Shelia L. Smith